RECENT CASES.

CARRIERS—LIABILITY—INJURY TO PASSENGER—PHYSICAL CONDITION OF PASSENGER—CONTRIBUTORY NEGLIGENCE.—ST. LOUIS S. W. RY. CO. OF TEXAS v. FERGUSON, 64 S. W. Rep. 797 (Texas).—The railroad company allowed a car to collide with the train in which the appellee and his wife were seated. The collision was accompanied with such force that it partially knocked the appellee's wife from her seat and greatly shocked her, producing within a few days a premature birth, whereby she was permanently injured in health. *Held,* that the company was liable.

The company claimed that the collision would not have injured an ordinary passenger, and the company or its agents had no knowledge of the passenger's condition. Among other cases it cited *Car Co.* v. *Barker,* 4 Colo. 344, 34 Am. Rep. 89, a very similar case, in which the injury was held the remote result of the negligence. The court expressed its disapproval of this case, and followed *Brown* v. *Railway Co.,* 54 Wis. 360, 41 Am. Rep. 51; and *Car Co.* v. *Dupre,* 4 C. C. A. 540, 21 L. R. A. 289. A railway company owes a duty to persons other than those of ordinary physical condition. They are presumed to know that persons, old, decrepit, and infirm travel on their trains, and they must exercise care accordingly, *Railway Co.* v. *Rushing,* 69 Texas 306.

CONSTITUTIONAL LAW—EQUAL PROTECTION OF LAWS—NEBRASKA STATUTE REGULATING INSURANCE—ANTI-TRUST ACT.—NIAGARA FIRE INSURANCE CO. v. CORNELL, 110 Fed. Rep. 816 (Neb.).—The statute defining trusts, declaring them illegal, and all agreements in relation thereto void, in order to prevent combinations between fire insurance companies, declared void all agreements by or between insurance companies relating to the amount of commissions to be allowed agents, or the names of transacting the business of fire insurance. It expressly excepted from its provisions all associations of workingmen. *Held,* that the statute was unconstitutional.

This statute deprived persons of their liberty in violation of the federal constitution, which guarantees not merely liberty of the person, but also liberty to make and enforce contracts. In excepting labor unions, it denied the equal protection of the laws to all persons not members of such organizations. The *Railroad Traffic Association Case,* 166 W. S. 290, 17 Sup. Ct. 540, was strongly urged by the defendant as upholding the doctrine of the statute. The court held that it did not, for the reason that the statute under consideration in that case was an act of Congress, and upheld by reason of the commerce clause of the constitution, while the statute in this case was a state statute.

CONTRACTS — PARTIES — KNOWLEDGE — MISREPRESENTATION.— BARCUS v. DORRIES, 71 N. Y., Supp. 695.—Plaintiff, under the name of Committee on Distribution, through agent, obtained defendant's order for books by falsely representing that the seller was a committee of Congress and that the books

could be obtained only on the recommendation of a congressman. *Held,* that defendant was not obliged to take the books, even though they were as good as represented. Williams, J., *dissenting.*

This question does not seem to have been decided by the New York courts before, but there are many cases in other jurisdictions sustaining this decision. The controlling principle is stated in *Smelting Co.* v. *Mining Co.,* 127 U. S. 387, that every one has a right to select and determine with whom he will contract and cannot have another person thrust upon him without his consent. See also *Ice Co.* v. *Potter,* 123 Mass. 28.

CONTRACTS—PUBLIC POLICY—PROVISION IN NOTE.—UNION CENTRAL LIFE INS CO. V. CHAMPLIN ET AL., 65 Pac. 836 (Okla.).—A stipulation in a note, which forbids the maker's discharging his obligation by borrowing money from anyone except the payee, is contrary to public policy and hence null and void.

No hard and fast rule may be laid down in determining what contracts are contrary to public policy. Mr. Story says in his work on Conflict of Laws, Sec. 546: "Whenever any contract conflicts with the morals of the time, and contravenes any established interest of society, it is void, as being against public policy." The test is the evil tendency of the contract and not its actual injury to the public in a particular instance. *Brown* v. *Columbus National Bank,* 137 Ind. 655; *Atcheson* v. *Mallon,* 43 N. Y. 147; *Firemen's Association* v. *Berghaus,* 13 La. Ann. 209.

COUNTIES—BOARD OF SUPERVISORS—ORDINANCES—SUBMISSION TO VOTERS EX-PARTE ANDERSON, 66 Pac. 194 (Cal.).—In accordance with the directions of the state constitution, the statutes of 1897, Section 2, declares that the powers of a county can only be exercised by the board of supervisors or their agents. *Held,* that Section 13, which provides that any ordinance submitted by a certain number of legal voters and adopted at the polls shall have the same force as though ordained by the supervisors, is void. Beatty, C. J., *dissenting.*

The practical effect of the provisions in question would be to establish two equal, co-ordinate, law-making powers, each existing without any restrictions on the other. This would not only be an absurdity and a source of endless confusion, but plainly inconsistent with our accepted forms of government.

FEDERAL JURISDICTION—DIVERSE CITIZENSHIP—CORPORATIONS—UNITED STATES V. S. P. SCHOTLER, 110 Fed. 1.—Under act of Congress, March 3, 1887, as amended by Act of Congress, August 13, 1888, providing that no civil suit may be brought against any person outside of the district of which he is an inhabitant or a resident, a corporation of one state may not be sued in the Federal Courts of another state, in which it has an usual place of business.

The Judicary Act of 1875 provided that a person must be sued in the district in which he resided or might "be found" at the time of service of process. Under this act it was generally held that a corporation of one state, having a place of business and an agent in another state might be sued in the latter state. *Railroad Co.* v. *Harris,* 12 Wall 65; *Insurance Co.* v. *French,* 18